REMARKS

Applicants respectfully request reconsideration of this application as amended. Claims 1-3, 10, and 20 have been amended to present the claims in better form for allowance and for possible consideration on appeal. Claims 5, 8-9, 13-19, and 21-28 have been cancelled without prejudice. No new claims have been added. Therefore, claims 1-4, 6-7, 10-12 and 20 are presented for examination.

Premature Final Rejection

As an initial matter, Applicants strenuously object to the Examiner's issuance of **Final** Office Action (mailed 10-19-06), which is inappropriate and premature. Applicants respectfully remind the Examiner that "on the **second or any subsequent examination** or consideration by the examiner the rejection or other action may be made final" (MPEP 706.07(a); 37 CFR 1.113). The Final Office Action issued by the Examiner is **not second or subsequent examination** as the Final Office Action is the **first** office action issued since Applicant's filing of the Preliminary Amendment with RCE (mailed, 08-01-06). The Preliminary Amendment, as acknowledged by the Examiner, included "a new limitation into the originally sole independent 1, 10 and 20, dependent claims 2-4, 6-7, 11 and 21-22". At least for this reason, the Final Office Action is premature.

In light of MPEP 706.07(c), Applicants object to the premature Final Office Action and, under MPEP 707(d), Applicants respectfully request the withdrawal of the rejection of this Final Office Action.

35 U.S.C. § 112 Rejection

Claims 1-4, 6-7, 10-12, 20-23 and 25-26 are rejected under 35 U.S.C. §112, second paragraph.

Claims 1, 10 and 20 have been amended. Applicants respectfully request the withdrawal of the rejection of claims 1, 10 and 20 and their dependent claims.

Claims 2 and 3 have been amended. Applicants respectfully request the withdrawal of the rejection of claims 2 and 3.

Claims 21 and 22 have been cancelled without prejudice.

35 U.S.C. § 102 or 103 Rejection

Claims 1-2, 4, 10-11 and 20-22 are rejected under 35 U.S.C. §102(e) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious under over Margolus, U.S. Patent Publication No. 2004/0143743, ("Margolus").

In response to Applicants' amendments to the claims (as set forth in the Preliminary Amendment), the Examiner states "*applicant does not offer any evidence or explanation supporting applicant's assertion*. As a result the arguments form mere opinions unsubstantiated by facts." (Office Action, mailed 10-19-06, page 3; emphasis added). The Examiner further states "Margolus *does not explicitly teach* synchronizing the clients files and the server files, if the client file contents and the server file contents do not match, *the limitation, in not inherent, is at least implicity*." (id., page 5; emphasis added). Furthermore, the Examiner fails to address the entire limitation, such as the part about "prior to synchronizing" in the Office Action. (claim 1; emphasis added).

Applicants respectfully remind the Examiner that it is not the Applicant's responsibility to provide evidence or explanation, but rather it is the responsibility of the

Examiner to **explicitly illustrate where each and every element** of the claims that stand rejected is taught or suggested by the cited reference. Applicants proposed amendments (further narrowing the claims) to expedite issuance of this matter; however, it is the Examiner's responsibility to either explicitly show where the elements of the rejected claims are disclosed in the cited reference or allow the pending claims. See MPEP §2131; see also Chester v. Miller, 906 F.2d 1574, 1578, 15 USPQ2d 1333, 1337 (Fed. Cir. 1990).

Applicants respectfully submit that merely stating "*the limitation . . . is at least implicit*" (Office Action, page 5; emphasis added) does not satisfy the requirement that to anticipate a claim, the **reference must teach every element of the claim**. See MPEP § 2131, see also Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Furthermore, with regard to 35 U.S.C. § 102, the Federal Circuit has indicated that the standard for measuring lack of novelty by anticipation is **strict identity**. "For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, **every element of the claimed invention must be identically shown in a single reference**." In Re Bond, 910 F.2d 831, 15 USPQ.2d 1566 (Fed. Cir. 1990); emphasis added.

Applicants respectfully submit that the Examiner fails these tests in addressing each and every feature of claims 1, 10 and 20 and their dependent claims. Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 1, 10 and 20 and their dependent claims.

35 U.S.C. § 103 Rejection

Claim 3 is rejected under 35 U.S.C. §103(a) as obvious over Margolus in view of Chan, U.S. Patent No. 6,748,538 ("Chen") and Bolosky, U.S. Patent Publication No. 2002/0194484, ("Bolosky").

As an initial matter, Applicants object to the Examiner's Official Notice regarding claim 3 (Office Action, page 6). Claim 3 depends from claim 1 and thus includes all the limitations of claim 1 and is distinguished over the cited reference.

Conclusion

In light of the foregoing, reconsideration and allowance of the claims is hereby earnestly requested.

Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Request for an Extension of Time

Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Charge our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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